

CIVIL COVER SHEET

APPENDIX B

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

PNC Bank, National Association

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

James W. Hennessey, Esquire
Dilworth Paxson LLP
3200 Mellon Bank Center, 1735 Market Street, Philadelphia, PA 19103
215-575-7000

DEFENDANTS

Admiral Wine & Liquor Co.

County of Residence of First Listed Atlantic
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☒ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☒ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS I (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus: <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.
Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. Section 1332

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ Exceeds \$75,000.00 CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE
E Ronald L. Buckwalter

DOCKET NUMBER 04CV4264

DATE 10/25/04 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1600 Market Street, Philadelphia, PA 19103

Address of Defendant: 3303 Atlantic Avenue, Atlantic City, NJ 08401

Place of Accident, Incident or Transaction: Philadelphia, PA

(Use Reverse Side For Additional Space)

Does this case involve multidistrict litigation possibilities?

Yes ☐

No ☒

RELATED CASE, IF ANY:

Case Number: 04CV4264

Judge Buckwalter

Date Terminated: Pending

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☒

No ☐

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☒

No ☐

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐

No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☒ All other Diversity Cases

(Please specify)

Continuation of a security interest in inventory, conversion, unjust enrichment.

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, James W. Hennessey, Esquire, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 10/25/04

James W. Hennessey
Attorney-at-Law

20235

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____ Attorney-at-Law _____ Attorney I.D.# _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

APPENDIX C

CASE MANAGEMENT TRACK DESIGNATION FORM

PNC Bank, National Association

v.

Admiral Wine & Liquor Co.

CIVIL ACTION

NO.

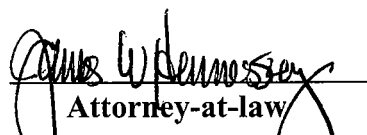
In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus -- Cases brought under 28 U.S.C. §2241 through §2255. ☐
- (b) Social Security -- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ☐
- (c) Arbitration -- Cases required to be designated for arbitration under Local Civil Rule 53.2. ☐
- (d) Asbestos -- Cases involving claims for personal injury or property damage from exposure to asbestos. ☐
- (e) Special Management -- Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ☐
- (f) Standard Management -- Cases that do not fall into any one of the other tracks. ☒

10/25/04

Date


Attorney-at-law
James W. Hennessey

Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PNC BANK, NATIONAL ASSOCIATION
1600 Market Street
Philadelphia, Pennsylvania 19103

CIVIL ACTION

No.

vs.

ADMIRAL WINE & LIQUOR CO.
3303 Atlantic Avenue
Atlantic City, New Jersey 08401

COMPLAINT

Plaintiff, PNC BANK, NATIONAL ASSOCIATION (“PNC Bank”), by and through its counsel Dilworth Paxson LLP, hereby asserts this Complaint against ADMIRAL WINE & LIQUOR CO. (“Admiral”), and avers the following:

PARTIES

1. PNC Bank is a national banking institution with an office at 1600 Market Street, Philadelphia, Pennsylvania, 19103.

2. Admiral is a corporation doing business in the State of New Jersey and the Commonwealth of Pennsylvania with an office at 3303 Atlantic Avenue, Atlantic City, New Jersey, 08401.

JURISDICTION

3. This Court has original jurisdiction over the Complaint pursuant to 28 U.S.C. § 1332 in that this proceeding is a civil action between parties of different states and the matter in controversy exceeds the sum or value of seventy-five thousand dollars (\$75,000), exclusive of interest and costs.

BACKGROUND

4. On or about February 27, 1992, Parliament Import Company ("Parliament") and PNC Bank (successor by merger to Midlantic Bank, N.A., successor by merger to Continental Bank) entered into a certain Loan and Security Agreement and related agreements and documents (collectively, the "Loan Agreement"). The Loan Agreement was amended on or about December 3, 1996, October 14, 1997, July 2, 1998, June 24, 1999, November 11, 2000 and September 28, 2001.

5. The Loan Agreement and its amendments established: (i) a line of credit in the maximum principal amount of \$900,000; (ii) a \$320,000 term note; (iii) a \$75,000 term loan; and (iv) a \$60,000 term loan (collectively, the "Loans").

6. Pursuant to the Loan Agreement, the Loans are secured by a first lien on and security interest in all of Parliament's existing and subsequently acquired and arising accounts, chattel paper, inventory, warehouse receipts relating to inventory and all books and records relating to Parliament's accounts and inventory, and all cash and non-cash proceeds (including without limitation, insurance proceeds) of all of the foregoing property and all additions and accessions thereto, substitutions therefore and replacements thereof and a certain \$500,000 life insurance policy on the life of Jonathan Shiekman (collectively, the "Collateral").

7. PNC Bank perfected its first lien on and security interest in the Collateral by filing financing statements on December 28, 2001 with the Department of State of the Commonwealth of Pennsylvania (the "Financing Statements"). A true and correct copy of the Financing Statements is attached hereto as Exhibit "A" and is made a part hereof.

8. Parliament defaulted on its obligations under the Loan Agreement and as of July 29, 2004, Parliament owed PNC Bank \$505,303.11 under the Loan Agreement.

9. On or about July 7, 2003, Parliament entered into an Asset Purchase Agreement (the "Asset Purchase Agreement") with Admiral, whereby Parliament sold, among other things, all of its inventory of wines to Admiral (the "Inventory"). A true and correct copy of the Asset Purchase Agreement is attached hereto as Exhibit "B" and is made a part hereof.

10. Upon information and belief, pursuant to the Asset Purchase Agreement, the Inventory was transferred by Parliament to Admiral's location at 630 S. 21st Street, Irvington NJ 07111.

11. By virtue of its perfected security interest in the Collateral, PNC Bank has a perfected security interest in the Inventory and all cash and non-cash proceeds realized from the sale thereof.

12. Admiral clearly knew that PNC Bank has a perfected security interest in the Inventory at the time it executed the Asset Purchase Agreement. Section 1.3 of the of the Asset Purchase Agreement provides that Admiral "does not assume, and does not purchase the [Inventory] subject to, any debts, liabilities or obligations of any nature ... except that [Admiral] shall take the [Inventory] subject to the lien of Seller's \$900,000 Bank Debt." Section 4.4 of the Asset Purchase Agreement provides that Parliament has good and marketable to the Inventory, except for the Bank Debt.

13. Moreover, section 7.6 of the Asset Purchase Agreement provides that Parliament shall "deliver to [Admiral] a letter from [PNC Bank] ... containing the bank's consent to the consummation of this Agreement without acceleration of the Bank Debt."

14. PNC Bank did not consent to the consummation of the Asset Purchase Agreement.

15. Admiral entered into the Asset Purchase Agreement despite (i) knowing that PNC Bank has a perfected security interest in the Inventory and (ii) not receiving the consent of PNC Bank as required under the Asset Purchase Agreement.

16. Upon information and belief, despite knowing that PNC Bank has a perfected security interest in the Inventory, Admiral sold the Inventory to customers in the ordinary course of its business.

17. PNC Bank has a perfected security interest in any proceeds (the "Proceeds") Admiral realized from the sale of the Inventory.

18. Section 11.5 of the Asset Purchase Agreement provides that the laws of the state of New Jersey govern the Asset Purchase Agreement.

19. On or about August 10, 2004, PNC Bank filed a complaint against Jonathan Shiekman ("Shiekman") in the Court of Common Pleas of Philadelphia County, Pennsylvania, No. 040600776. Shiekman removed the action to this Court on or about September 9, 2004 (Case No. 04-cv-4264) and, on or about October 8, 2004, filed a third-party complaint against Admiral.

Count I
Conversion

20. PNC Bank hereby incorporates paragraphs 1 through 19 herein as if the same were set forth in detail.

21. Although it knew that PNC Bank has a perfected security interest in the Inventory, Admiral sold the Inventory for its own benefit so as to deprive PNC Bank of its right to the Inventory.

22. Because of the conversion of the Inventory by Admiral, PNC Bank sustained a loss equal to the fair market value of the Inventory.

WHEREFORE, PNC Bank demands judgment against Admiral in a sum equal to the Proceeds plus interest, all costs of suit including attorneys' fees, and such other relief as may be just and proper.

Count II
Continuation of Security Interest Pursuant to the Uniform Commercial Code

23. PNC Bank hereby incorporates paragraphs 1 through 22 herein as if the same were set forth in detail.

24. Pursuant to section 9-315 of the Uniform Commercial Code as adopted in New Jersey in N.J.S.A 12A:9-315, a security interest in collateral (i) continues notwithstanding a sale, lease, license, exchange or other disposition thereof unless the secured party authorized the disposition free of the security interest, and (ii) attaches to any identifiable proceeds of the collateral.

25. PNC Bank did not authorize the sale of the Inventory by Admiral.

26. PNC Bank has a perfected security interest in the Inventory, which continues in the Proceeds.

27. Because Admiral sold the inventory without PNC Bank's authorization, PNC Bank has sustained a loss equal to the fair market value of the Inventory.

WHEREFORE, PNC Bank demands judgment against Admiral in a sum equal to the Proceeds plus interest, all costs of suit including attorney's fees, and such other relief as may be just and proper.

Count III
Unjust Enrichment

28. PNC Bank hereby incorporates paragraphs 1 through 27 herein as if the same were set forth in detail.

29. PNC Bank, as the holder of a perfected security interest in the Inventory and the Proceeds, is entitled to the Proceeds received by Admiral from the sale of the Inventory.

30. Admiral has retained the Proceeds thereby enriching itself with property that rightly and justly belongs to PNC Bank.

31. PNC Bank is entitled to restitution from Admiral for the improper sale of the Inventory and the retention of the Proceeds.

WHEREFORE, PNC Bank demands judgment against Admiral in a sum equal to the Proceeds plus interest, all costs of suit including attorneys' fees, and such other relief as may be just and proper.

Dated: October 25, 2004

/s/ James W. Hennessey
James W. Hennessey, Esquire
PA I.D. #20235
Validation Code: JH708
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